IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.890 OF 1993

Gordhan Jaromal Kodwaney]
29/12-C, Manish Rose Co.Op.]
Hsg.Socy. Ltd. Manish Nagar]
4 Bungalows, Andheri (W)]
Bombay - 400058]..Petitioner

Vs.

1. The Hindustan]
Petroleum Corporation]
of India Ltd. 17,]
Jamshedji Tata Road,]
Churchgate-Bombay]
400020]
]
2. The Chairman,]
Board of Trustees]
HPCL Employees']
Superannuation Benefit]
Fund Scheme, 17,]
Jamshedji Tata Road,]
Churchgate, Bombay-]
400 020]..Respondents

....

Mr.N.M.Ganguli counsel for Petitioner
Mr.M.D.Siodia with Ms. D.S. Rethiwala
i/b Rustomji & Ginwala for Respondents

....

CORAM: F.I.REBELLO AND
SMT.V.K.TAHILRAMANI,JJ.
DATE : JUNE 16,2006

ORAL JUDGMENT (PER SMT.V.K.TAHILRAMANI,J.):

1. The Petitioner worked with Respondent No.1 i.e.

Hindustan Petroleum Corporation of India Ltd. (hereinafter referred to as "HPCL") from 1.5.1980 to 31.1.1993. On 30.5.1988 Respondent No.2 introduced the Employees' Superannuation Benefit Fund Scheme effective from 30.5.1988. The said scheme was contributory and recognised under the Income Tax Act. As per the rules, for a person to become entitled for the benefit under the said Scheme, the minimum service of the person had to be 15 years inclusive of 5 years of service after the introduction of the scheme. It was made clear that the requirement of continuous service of 5 years from the date of joining the scheme, would not apply to the members who superannuated on or before 31.5.1995. The Petitioner fell in this category.

2. The Petitioner applied for the benefits under the said scheme, as according to him, he was eligible in accordance with the Rules of the scheme. However, Respondent No.2 by letter dated 28.1.1993 informed the Petitioner that he did not fulfill the requirements of eligibility for the benefits under the scheme namely completion of minimum of 15 years of continuous service prior to

the date of the superannuation and therefore, the Petitioner would not get the benefit under the scheme. Being aggrieved by this communication/action debarring the Petitioner from availing the benefits of the said scheme, this writ petition has been preferred.

3. Mr.Ganguli has submitted that the Respondents have arrived at an erroneous conclusion that the Petitioner had not completed 15 years of service. Mr.Ganguli submitted that the Petitioner had worked in NEPA Mills which is a public sector undertaking from 27.5.1969 to 9.8.1976. The Petitioner worked in M/s. State Trading Corporation of India Ltd. (hereinafter referred to as "STC") from 1.6.1976 to 30.4.1980. Thereafter, the Petitioner joined HPCL and worked from 1.5.1981 till the date that he was superannuated i.e. 31.1.1993. Mr.Ganguli submitted that if the petitioner’s service in the three organisations is taken into consideration, it is more than 15 years, hence, the petitioner would be eligible.

4. As far as the period that the Petitioner worked

in STC and HPCL, there is no dispute. It is an admitted fact that the Petitioner worked in STC for two years 10 months and 29 days and in HPCL for 12 years 8 months and 13 days. The total period that the Petitioner worked in these two organisations, is 14.46 years. On this count, there is no dispute. However, according to Mr.Ganguli, the period that the Petitioner worked in NEPA Mills i.e. 7 years 2 months and 13 days, ought to have been taken into account and if this period is taken into account, the Petitioner satisfies the criteria of continuous service of 15 years. On the other hand, Mr.Siodia for the Respondents has pointed out that the Petitioner worked in NEPA Mills upto 9.8.1976. Thereafter there is a gap in service as the Petitioner joined STC on 1.6.1977 hence, it cannot be said that the Petitioner was in continuous service from 27.5.1969 i.e. the date when he joined NEPA Mills. Thus, he submitted that the service period in NEPA Mills cannot be taken into the reckoning.

5. The Rule relating to the "Reckonable Service" under the said scheme is as under:-

. (o) RECKONABLE SERVICE relating to an employee will be the total of :

. (i) the period of future continuous service with the Corporation reckoned from the date of his entry into the Scheme upto his normal retirement date or the date of cessation of service as the case may be;

. (ii) the period of past continuous service with the Corporation credited as per the formula provided in Rule-10 which is reproduced below:

. "The past continuous service of a member who is in the employment on the date of effective date of the scheme will be discounted by 1% for each year of service by applying the formula:

. (1 - d/divided by 100) x d where d = past service"

. Such past continuous service may also relate to that part of the continuous service of an employee with the predecessors-in-title of any or part of the undertaking for the time being and from time to time of the Corporation and shall also include continuous service in Central and/or State Govt./Public Sector Undertakings immediately prior to joining the Corporation".

6. From the service record of the Petitioner we have seen that the Petitioner was not in continuous service as required under the said Rules. On this count itself, the Petitioner would not be entitled

to the benefits under the said scheme.

7. Mr.Ganguli thereafter submitted that as per Rule (o)(iii), if the Petitioner has worked for a part of the year, it will be deemed as a full year's service. Mr.Ganguli submitted that as per the Respondents, the period of service of the Petitioner is 14.46 years, thus, he has submitted that the part year that the Petitioner has worked, would be deemed as full year in which case, the Petitioner would be deemed to have completed 15 years of service.

8. Rule (o)(iii) reads as under:

> . (o)(iii) In respect of part year, service of nine months will be deemed as full year's service. Service of three months or more but less than nine months will be deemed as half year's service. Service of less than three months will not be taken into reckoning.

9. Mr.Siodia, the learned counsel for the Respondents has pointed out that the service of the Petitioner over 14 years was less than 9 months. In such case, it would be deemed as half year's service and infact, the Respondents had rounded off the

period of service of the Petitioner from 14.46 to 14.50 i.e. 14.5 years. Even after the rounding off, the Petitioner does not comply with the requisite criteria of 15 years of "continuous service". Thus, in our opinion, this contention fails.

10. It is an admitted fact that amount contributed by the Petitioner, has been returned back to him with interest. Looking to the service record of the Petitioner, it cannot be said that the Petitioner was in "continuous service" for a period of 15 years. Hence, he would not be entitled to the benefits under the Scheme. Hence, petition is dismissed. Rule discharged.

[F.I.REBELLO, J.]

[V.K.TAHILRAMANI,J.]